IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 844 of 1998
With
CRIMINAL APPEAL No. 1069 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ABDUL HANNAL ABDUL KARIM VORA - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

==========

Appearance :
MR MM TIRMIZI for Appellant(s) : 1,
Mr.L.B.Dabhi, APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/07/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The convict-appellant came to be tried by Sessions Court, Ahmedabad (Rural) in Sessions Case No.84 of 1997 for the kidnapping of minor Mohammed Irfan Abdul Sattar, attempted sodomy on him followed by his murder and destruction of evidence thereafter on 2.1.1997 near Khantoda Kabrastan at Dholka. The Sessions Court accepted the case of kidnapping and sentenced the convict-appellant to undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months. The Court also accepted the case of murder against the convict-appellant and sentenced him to undergo imprisonment for life. However, the trial Court did not accept the case of sodomy/attempted sodomy and destruction of evidence and recorded acquittal therefor.

2. The convict has preferred appeal against his conviction for case of murder and kidnapping being Criminal Appeal No.844 of 1998 whereas the State has preferred appeal against the acquittal of the accused for offence of sodomy and destruction of evidence being Criminal Appeal No.1069 of 1998.

3. Since the two appeals arise out of the same judgment and order, they are clubbed together, heard together and are decided by this common judgment. For sake of convenience, the convict – appellant would be

referred to as the accused in this judgment.

4. The prosecution case in brief is that the deceased and the convict-appellant are residents of Dholka. On 2.1.1997, the deceased was returning home after attending school at about 5 p.m., in company of Mustafa Valibhai and Ejaz Riyazmiya, his co-students. When they reached near the shop of one Lala (P.W.11 Mehboob Gulam Rasul Lala), the convict-appellant was found standing over there. It appears that the convict-appellant and the deceased were on good terms as the deceased demanded chewing gum which the convict-appellant bought to him. Then the victim demanded kites. The accused said that he would buy kites to him from chakla area and then they left towards chakla and the other two boys went in different directions. Thereafter, the deceased went missing. On the next day, the police was informed by the parents. School was also informed and the school invited those children who knew about the deceased and P.W.9 and P.W.12 Ejaz and Mustafa respectively went to the Principal and told him about having seen the deceased leaving in company of the convict-appellant on the previous day i.e. 2.1.1997. It is further the case of the prosecution that on 4.1.1997 around 5 p.m., the convict-appellant was seen by P.W. 2 Abdul Razaq Dadabhai trying to cover up a dead body lying in a grave by throwing soil and on being asked by Abdul Razaq, he said that somebody has recently buried a dead body and is not fully covered and, therefore, he was throwing soil but then he went

away. It is also the prosecution case that the convict – appellant made an extra judicial confession before P.W. 3 Ismailbhai Abderehman and his friend Mohammad Yunus around 2 a.m., of 5.1.1997 on inducement where the convict-appellant is said to have admitted having kidnapped the deceased, attempted sodomy and the destruction of evidence viz., dead body and, therefore, on 5.1.1997, the convict-appellant came to be arrested from his home. The police made detailed investigation and having found sufficient evidence, filed the charge sheet in the Court of Judicial Magistrate First Class, Dholka who in turn committed the case to the Court of Sessions, Ahmedabad (Rural) and Sessions Case No. 84 of 1997 came to be registered and decided by the judgment and order dated 15.7.1998 as narrated above.

5. We have heard learned advocate Mr.Imram Pathan for Mr.Tirmizi and Mr.Dabhi, learned APP for the State.

6. Learned advocate for the accused has raised following contentions :

6.1 At the time of incident, appellant was below 18 years of age and was, therefore, a juvenile as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000. He submitted that although at the time of incident, the said Act had not come into operation, it is now operating and, therefore, benefit of Section 20 may be given to him

and the matter may be referred to the Juvenile Justice Board if this Court finds him guilty of offences for which he was tried. He submitted that since a period of almost ten years has passed since conviction, this Court may quash the sentence if it finds that the appeal of the accused does not merit acceptance. In support of his submission, he has relied on the decision in the case of Upendrakumar V/s State of Bihar, reported in (2005) 3 SCC 592.

6.2. Learned advocate submitted that the prosecution case depends on circumstantial evidence. There is no direct evidence on question of murder. The chain of circumstances is not completely established. As per the medical evidence, the death of the deceased occurred prior to 24 hours from the time of post-mortem which is 2 p.m., on 5.1.1997. The death, therefore, can be estimated to have occurred on 4.1.97 whereas the last seen evidence is in relation to 5 p.m., on 2.1.1997. There is a big gap of about 48 hours from the time of last seen together till the time of demise. This cannot be considered as in proximity and possibility of some other intervening factors having occurred cannot be ruled out.

6.3. It was submitted that the motive has not been proved by the prosecution and necessarily benefit should go to the accused in case of circumstantial evidence.

6.4. It was submitted that the prosecution depends on extra judicial confession orally made before the witness. The said confession cannot be relied upon as it is not voluntary and, therefore, it cannot be said that the circumstances lead to a conclusive hypothesis of guilt of the accused appellant. The appellant's appeal may, therefore, be accepted.

7. Learned APP Mr.Dabhi submitted that the trial Court has considered all relevant aspects of the case and has then come to the conclusion that offence of murder and kidnapping is proved against the accused. He submitted that there is clear evidence of witnesses Ejaz, Mustufa and Mehboob to indicate that the accused and the deceased went together towards chakla where-after the deceased was not seen. Mr.Dabhi submitted further that the deceased was found dead on 5.1.1997. His dead body was lying in a grave. The accused was seen attempting to cover up the grave with soil by witness Abdul Razaq Dadabhai on 4.1.1997 evening. It was submitted that the post-mortem notes indicate that the Rigor Mortis was absent and there was presence of post-mortem lividity. These two factors taken collectively would indicate that the death must have occurred in the evening/night on 2.1.1997. The Rigor Mortis had set in and set out. The trial Court was, therefore, justified in holding that the prosecution proved the case of murder against the accused so also kidnapping.

7.1. Mr.Dabhi submitted that the State has preferred appeal against acquittal of the accused for the offences under Section 377 and 201 of Indian Penal Code. He submits that if evidence of Abdul Razaq Dadabhai is seen, it is clear that there is direct evidence to show that the accused tried to make the evidence disappear by covering the dead body with soil in a graveyard which was not in use. The trial Court has recorded the acquittal for this offence on the ground that the miscreant himself cannot be convicted under Section 201 of the Indian Penal Code or that even if he can be convicted, separate sentence cannot be awarded. Mr.Dabhi submitted that the position of law is different where a view is taken by the Apex Court that a person who has himself committed a murder, if he tries to make the evidence disappear, he can be convicted for both the offences. He submitted, therefore, that the appellant ought to have convicted under Section 201 of Indian Penal Code also. He submitted, therefore that criminal appeal no.844 of 1998 may be dismissed and criminal appeal no.1069 of 1998 may be allowed in part.

8. We have examined Record and Proceedings in light of the submissions made by rival sides.

9. At the outset, we may record that the case depends on circumstantial evidence and there is no direct evidence for the offence of murder or sodomy.

The chain of circumstances sought to be pressed by the prosecution is that the deceased and accused were last seen together when they left the shop of Mehboob Lala at about 5.00 p.m., on 2.1.1997. Thereafter, the accused was found to be covering up the dead body with soil in a grave yard not in use and on being inquired about by Abdul Razaq Dadabhai, he went away saying that somebody has recently buried a dead body which is not fully covered. The accused is alleged to have made extra judicial confession before P.W. 3 Ismailbhai Abderehman and his friend Mohammad Yunus (who has expired and is not examined as witness) about kidnapping and murder. There were injuries on person of the accused. The accused has discovered the place where he allegedly destroyed the school bag of the deceased and discovery of a plastic bag used by him for throwing soil on the dead body in the grave.

10. Evidence of P.W. 1 Abdul Sattar Gulamnabi Mansuri Exh.9 indicates that his son Mohammad Irfan was studying in Mohammadi School in standard 3. On 2.1.1997, when he did not come back, the witness says that he started inquiring and on being unsuccessful in locating the child, he went to Dholka police at about 9.45 p.m., and informed about the missing child which is at Exh.11. The witness says that on 4.1.1997 around 8.p.m., Abdul Razaq Dadabhai came to his house and informed that around 6 p.m., when he had gone to Kabrastan (grave yard) for offering flowers, he saw the accused throwing soil into a pit. On being inquired as to what was he doing, he got scared and

told that somebody had buried a dead body there which was not fully covered and, therefore, was trying to cover it up. Abdul Razaq also found that a leg of the dead body was visible up to knee. Abdul Razaq, therefore, asked this witness to inquire whether the dead body was that of his missing son. The witness says that he went home, contacted his friends Mohammad Yunus and Ismailbhai Abderehman and, thereafter they both went to the house of the accused for inquiry. On 5.1.1997 morning at about 6.00 a.m., they came and informed first informant that they have persuaded the accused and that he has confessed that on 2.1.1997, he lured the deceased by offering chewing gum and took him to Khantoda Kabrastan with a view to have carnal intercourse and, therefore, he suggested that necessary inquiry may be made. It was also informed that because the minor victim refused to permit such relationship and told that he would inform his parents, the accused throttled him to his death apprehending defamation. The witness says that he and two of his friends went at about 6.30 a.m., to the house of accused but he was not available, therefore, they went to the grave yard and found a dead body with open leg lying in a burial pit. He felt that it was his son. He, therefore, lodged the FIR. The witness has been cross-examined at length. It appears from the evidence of this witness that he has no personal knowledge about the incident.

11. Evidence of Abdul Razaq Dadabbai Exh.13 indicates that he had gone to the grave yard on

4.1.1997 evening and he saw accused throwing soil in a grave pit and on being asked, the accused ran away saying that somebody has buried a dead body which is lying open. The witness himself verified and found that the dead body was lying in the grave pit and the leg was open upto the knee. He, therefore, went to P.W. 1 Abdul Sattar and asked him to verify. The witness is cousin of P.W. 3 Ismail Abderehman. During cross-examination, he states that he suspected a foul play but he did not take any police action. The witness is cross-examined thoroughly but nothing turns on it and no material emerges therefrom to render his evidence doubtful.

12. Evidence of Ismail Abderehman is at Exh.14. He says that on 2.1.1997, Abdul Sattar's son Mohammed Irfan did not return from school. Abdul Sattar, therefore, went to his home and told him about his missing son. He, therefore, started search for the boy along with Abdul Sattar and Mohammed Yunus. On 4.1.1997, Abdul Sattar came to his place and told him that Abdul Razaq had come to his house and told him that accused had come to him and told him that he has seen the accused throwing soil in a grave. He, therefore, went to inquire from the accused. The witness then says that he along with Mohammad Yunus went to the house of the accused at about 9.00 p.m. He was not available then. They again went at 2.00 a.m., in the next morning. At that time, accused was found at home. On seeing them, he started acting like a lunatic. He says that they took him aside and told

him that if he has committed any mistake, he should inform them and that they would protect his interest. After some hesitation, the accused told them that he had taken deceased Irfan to the grave yard after buying him chewing gum. He also told him that he had purchased kites for him. He had confessed that he wanted to have carnal intercourse with the deceased and he started crying. The deceased told him that he would inform his parents and, therefore, he throttled the deceased. The accused also told him that when the victim died, he took the dead body to the grave pit which was open, then threw some soil etc., and placed two blocks. The witness said that thereafter, he went to the house of Sattarbhai at about 6.00 a.m., along with Mohammed Yunus. He also told Sattarbhai about what had transpired. The witness has been cross-examined. He says that he himself had questioned the accused. He says that he had interrogated him on the first floor of the house and told him that if mistake has occurred, they would protect him and, thereafter, the accused divulged about having taken the victim after buying him chewing gum and trying to develop carnal relations and having failed therein having committed murder of the deceased by throttling.

12.1. It has come in his evidence that Mohammed Yunus, who had accompanied him to the accused had expired subsequently.

12.2. The above evidence indicates that he along with Mohammed Yunus interrogated the deceased and

before them the deceased made an extra judicial confession about the alleged kidnapping, attempted rape and then murder. It has come in evidence that these two persons were friends of Abdul Sattar, father of the victim and the first informant. They are connected with the family of the deceased. There is no evidence to indicate that there was any relation between these two persons and the accused. No evidence is led by the prosecution to show that the accused and these two witnesses were so closely or intimately related that the accused would have reposed faith in them and would have confessed his guilt. Further, even as per evidence of Ismail Abderehman, he and Mohammed Yunus persuaded the accused and lured him to confess by promising him protection. If the accused made a confession in such circumstances, it can hardly be said to be a free confession. Such confession cannot be accepted as foundation of conviction. Accused had no reason to make such a confession to these persons at odd hours of night. It is also the evidence that accused on being given assurance of protection reluctantly made confession. We, therefore, do not find any error on part of trial Court in refusing to accept extra judicial confession.

13. Next evidence is in form of oral evidence of Ejaz Riyazmiya, Mustufa Valibhai and Mehboob Gulam Rasul Lala. They are all unanimous on one point that on 2.1.2005, when the victim along with two other boys came to the shop of Mehboob Gulam Rasul Lala,

the deceased asked for buying chewing gum from the accused who bought him chewing gum. Thereafter, the deceased demanded kites which also accused promised to buy to him and then the accused and minor victim went together towards chakla. Thereafter, what happened is not known. Their depositions have also remained unshaken during cross-examination.

14. Evidence of Ejaz Riyazmiya and Mustufa Valibhai is that they had informed their Principal about the above aspect when an announcement was made in the school requiring persons having knowledge about the deceased to contact the Principal. This is supported by witness Hamidaben Abdulkarim Mansuri Exh.26. After the accused was seen by Abdul Razaq Dadabhai on 5.1.1997, Abdul Sattar Gulamnabi Mansuri along with others went to the grave yard and found that dead body was seen lying in the pit with his legs exposed.

15. Dr.Chhatrasinh Vajesinh Barad who performed the post-mortem is examined at Exh.28. He deposed that he had performed post-mortem of the dead body of the victim on 5.1.1997 between 2 p.m., and 3 p.m. He noticed injuries on neck of the deceased and hind portion of the right hand. According to him, time of death was prior to 24 hours of the time of performance of post-mortem. During cross-examination, he says that marks on the neck would be noticed in front neck in case of strangulation. The post-mortem notes are at Exh.29 which indicates that Rigor Mortis

was absent and post-mortem lividity was marked on back and buttocks. The opinion as to cause of death is asphyxia caused by throttling. The doctor has opined that the injuries were sufficient in ordinary course of nature to cause death of a human being.

16. Dr.Anopsinh Hiraji Thakur Exh.36 is the doctor who had examined the accused and had noticed the injuries on right knee, right shoulder, left thumb and right eye in form of abrasions. The doctor has admitted that if a man suffers a fall while climbing down a bus, he may suffer such injury.

17. If the above evidence is scanned and analyzed, we find that evidence of two child witnesses and witness Mehboob Gulam Exh.9, 12 and 11 respectively would clearly indicate that the deceased and the accused were last seen in company of each other on 2.1.1997 at about 5 p.m., and, thereafter, the deceased was not seen and only dead body was found. Thereafter, the accused was seen covering up a dead body in a grave by P.W.2 Abdul Razaq on 4.1.1997 in the evening hours whereafter, he went away. Then, he was seen by witness Ismail Abderehman and Mohammed Yunus before whom he allegedly made extra judicial confession and on 5th morning, dead body was found out. On post-mortem, the doctor said that death may have occurred before 24 hours of the post-mortem.

17.1. It was vehemently argued that the evidence of last seen together is not in proximity of time of

the death of the deceased because the doctor has said that the death may have occurred prior to 24 hours of post-mortem that is between 2 p.m. and 3 p.m. on 5.1.1997 that would bring the time of death to somewhere on 4.1.97 and if that is calculated, it was contended that the time gap between the last seen together and actual time of death would be about 44 hours. Anything may have happened during this time. The deceased cannot be said to have been seen in company of the accused lastly within proximate time limit after death. It is true that the possibility of some other intervening factors which may be responsible for the death of the deceased cannot be ruled out in such eventualities where time gap is big. In the instant case, however, the position is slightly different because after the accused and the deceased were seen together alive, they are seen together even after death of the victim on 4.1.1997 around 5 p.m., in the grave yard when the accused was trying to cover up the dead body of the victim with soil. Except denial, no explanation is coming in this regard. We have no reason to disbelieve the say of witness Abdul Razaq who had seen the accused trying to cover up the dead body with soil. In fact, he went to the grave yard next morning and thereby the place wherefrom the dead body of the deceased found was just as described by him. Therefore, the link between last seen together and find of dead body cannot be considered as missing.

17.2. It was argued about time of death where it

was contended that death must have occurred on 4.1.1997 in the afternoon as per medical evidence. However, we notice that the medical evidence is to the effect that the death must have occurred before 24 hours prior to performance of post-mortem and, therefore, it can be any time before the afternoon of 4.1.1997. No specific narrated down time of death is given by the doctor. In this respect, the post-mortem notes indicate that post-mortem lividity was present and Rigor Mortis was absent. The inquest report speaks of presence of Rigor Mortis. This would mean that Rigor Mortis had set out at the time of P.M. We can take notice of the fact that medically Rigor Mortis ordinarily sets in within hours of demise and after it is fully set in, it starts setting out which takes about 36-48 hours. This fixes the time of death in the evening or late evening of 2.1.1997 and the factor to support this view is noting in inquest panchanama about symptoms of degeneration. Resultantly, it cannot be said that the evidence of last seen together gets snapped because of time lag between the time of last seen together and time of death. The fact that the accused and deceased were last seen is properly established through evidence of Ejaz Riyazmiya, Mustufa Valibhai and Mehboob Gulam Rasul Lala. Approximation of time of death comes to late evening of 2.1.1997. Under the circumstances, we are unable to accept the contention that the complete chain of events leading to the hypothesis of guilt of the accused is not established.

17.3. It was contended that motive for the offence is not established. It is true that there is no evidence as regards the motive although it was alleged that the motive was establishing carnal intercourse with the deceased by the accused but there is no evidence coming on record except the evidence of Ismail Abderehman – P.W. 3 who says that before him and deceased Mohammad Yunus, the accused made an extra judicial confession. We notice that neither Ismail nor Mohammed Yunus were known to the accused in any manner prior to the incident nor is there any evidence to show that they were so nearly related that a person would repose faith and make such extra judicial confession. It has come in evidence of Ismail Abderehman that they in fact lured the accused by saying that if he has committed any wrong, he should say so and they would help him out. This extra judicial confession cannot be said to have been made normally by the accused even if it was made and, therefore, cannot be relied upon as a circumstance against the accused either for kidnapping or for murder or for motive, namely sodomy.

17.4. The question, therefore, that requires to be answered is whether in a case of circumstantial evidence, absence of proof of motive would be fatal to the prosecution. In this regard, we may refer to the decision in the case of State of UP V/s Babu Ram AIR 2000 SC 1735 wherein it has been held that motive factor cannot weaken the prosecution case which is

based on circumstantial evidence. Their Lordships observed that “motive is a relevant factor in all criminal cases whether based on testimony of the eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or whether inability to prove motive would weaken the prosecution case to any perceptible limit. No doubt, if the prosecution proves the existence of a motive, it would be well and good for it, particularly, in a case depending on circumstantial evidence, for, such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law.”

17.5. We may refer to the recent decision of this Court in the case of State of Gujarat V/s Satish @ Kalu Hathoda Bhikhabhai Patel, reported in 2006(1) GLR 816 where a view is taken that absence of motive for crime would not be fatal to the prosecution case. In the case on hand, we find out that motive is not established properly by adducing legally acceptable evidence. But that is only one stage when we find as the deceased and accused were seen together within proximity of time of death, we find that the accused was seen trying to cover up the grave pit by putting

soil in an unused grave yard, we are of the view that the nexus is properly established between the accused and the offence. The trial Court was justified in recording the conviction of the accused. We do not find any reason to interfere with the conviction part.

18. We have examined the evidence and we find that there is substance in the contention raised by learned advocate for the accused that the accused was juvenile. In this regard, we may refer to the medical certificate of the accused where his age is referred as 17. Not only that, even while recording his plea, he is shown to be aged 17 years meaning thereby in the charge sheet his age must have been indicated as 17 years. If that is so, the prosecution case itself is that the accused was aged 17 even at the time of trial and, therefore, we accept the plea that the accused is a juvenile and, therefore, is required to be referred to the Juvenile Justice Board in light of Section 20 of the Juvenile Justice (Care and Protection) Act, 2000.

18.1. Now comes the important question which is raised by learned advocate for the accused namely that the accused was juvenile and he could not have been tried by the Sessions Court. He submitted that the accused is in jail for nearly ten years and, therefore, keeping in mind the decision of the Apex Court in the case of Upendra Kumar V/s State of Bihar reported in (2005)3 SCC 592, the sentence may be

quashed.

18.2. We have gone through the judgment. In the said judgment, the facts were very similar namely that when the High Court heard and decided the appeal in that case, Juvenile Justice (Care and Protection of Children) Act, 2000 had already come into force with effect from 1.4.2001 and the appellant was entitled to benefit of the said Act. The said Act has a special provision made in Section 20 in respect of pending cases which provides that notwithstanding anything contained in the Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act came into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and then instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of punishment to that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under Act that a juvenile has committed the offence.

18.3. Their Lordships, however, considering the time gap quashed the sentence awarded to the convict and held that question of referring the appellant to Juvenile Justice Board did not arise. We are unable to accept the contention of learned advocate for the appellant that this Court may also quash the

sentence. However, in light of Section 20 of the Act, we have examined the case on merits which was pending before us and have come to a conclusion that he is rightly held guilty of offences punishable under Sections 302 and 363 of Indian Penal Code.

18.4. We, however, find that the trial Court committed an error in recording acquittal for the offence punishable under Section 201 of Indian Penal Code of causing disappearance of evidence of an offence. The trial Court was of the view that under Section 201, only the person who is other than the person responsible for the principal offence can be punished. But looking to the section as well as the decision in the case of Smt.Kalavati and another V/s The State of Himachal Pradesh AIR 1953 SC 131 wherein it was observed that Section 201 is not restricted to the case of a person who screens the actual offender; it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under Section 201. We, therefore, partly allow the state appeal by reversing the finding of the trial Court acquitting the accused for offences punishable under Section 201 of the Indian Penal Code and find him guilty of the said offence and convict him therefor.

19. Resultantly, Criminal Appeal No.844 of 1998 stands dismissed to the extent that conviction is upheld. So far as sentence part is concerned, the

accused is referred to the Juvenile Justice Board under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 for decision in accordance with law on sentence in light of the decision of the Apex Court in the case of Upendra Kumar V/s State of Bihar reported in (2005) 3 SCC 592. It is expected that the Juvenile Justice Board will treat this matter on a priority basis keeping in light the fact that the accused is in jail for nearly ten years.

20. Criminal Appeal No.1069 of 1998 stands partly allowed. The acquittal of the accused for offence punishable under Section 377 is confirmed. The accused is convicted for the offence punishable under Section 201 of Indian Penal Code and is referred to Juvenile Justice Board for sentencing purpose.

20. It is clarified that the accused is referred to the Juvenile Justice Board for deciding the question of sentence for offences punishable under Section 302, 363 and 201 of the Indian Penal Code which the Board is expected to do expeditiously and in accordance with law keeping in light the fact that accused is in jail for ten years.

21. The prison authorities are directed to produce the accused before Juvenile Justice Board having jurisdiction at the earliest preferably within 10 days of receipt of order.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

srilatha